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8 Attorneys for Third Party
Brocade Communications Systems, Inc.
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 GREGORY L. REYES and STEPHANIE
JENSEN,

18 Defendants.
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CASE NO.: CR 06-0556 CRB

**STIPULATION AND ~~PROPOSED~~
ORDER REGARDING
CONFIDENTIALITY**

STIPULATION

WHEREAS, this is a criminal action brought against defendants Gregory Reyes and Stephanie Jensen;

WHEREAS, pursuant to Rule 17 of the Federal Rules of Criminal Procedure, defendant Gregory Reyes has issued a subpoena to produce documents to third party Brocade Communications Systems, Inc. ("Brocade");

WHEREAS, defendant Gregory Reyes has also issued subpoenas to third party Brocade in a related civil action brought by the Securities and Exchange Commission, Case No. C 06-04435 CRB, also pending before this Court (the "SEC Action");

WHEREAS, in order to protect the confidentiality of confidential information produced in the SEC Action, defendant Gregory Reyes and Brocade agreed to a [Proposed] Stipulated Confidentiality Order ("Confidentiality Order"), docket number 68-1, a copy of which is attached hereto as Exhibit A;

WHEREAS, Brocade also wishes to protect the confidentiality of confidential information that may be produced to defendant Greg Reyes in this action;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, subject to approval of the Court, that the Confidentiality Order filed in the SEC Action, docket number 68-1, *as amended by the Court,* shall also apply in this action.

Dated: January 10, 2007

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: /s/ Caz Hashemi
Caz Hashemi

Attorneys for Third Party
Brocade Communications Systems, Inc.

1 Dated: January 10, 2007

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
300 South Grand, Suite 3400
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5 By: /s/ Jack DiCanio
6 Jack DiCanio

7 Attorneys for Defendant
8 Gregory Reyes

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10 ~~[PROPOSED]~~ ORDER *as amended*

11 PURSUANT TO THE FOREGOING STIPULATION, IT IS SO ORDERED.

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14 Dated: January 11, 2007


15 THE HONORABLE CHARLES R. BREYER
16 United States District Judge
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1 I, Mark T. Oakes, am the ECF User whose identification and password are being used to
2 file this STIPULATION AND [PROPOSED] ORDER REGARDING CONFIDENTIALITY. In
3 compliance with General Order 45.X.B, I hereby attest that Jack DiCanio has concurred in this
4 filing.

5
6 Dated: January 10, 2007

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

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8
9 /s/ Mark T. Oakes

Mark T. Oakes

Exhibit A

1 NINA F. LOCKER, State Bar No. 123838
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8 Attorneys for Third Party
Brocade Communications Systems, Inc.
9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 SECURITIES AND EXCHANGE)
COMMISSION,)

15 Plaintiff,)
16)

17 v.)
18)

GREGORY L. REYES, STEPHANIE JENSEN)
18 and ANTONIO CANOVA,)

19 Defendants.)
20)
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CASE NO.: C 06-04435 CRB

**[PROPOSED] STIPULATED
CONFIDENTIALITY ORDER**

1 In order to protect the confidentiality of confidential information subpoenaed by
2 defendant Gregory L. Reyes in this case, third party Brocade Communications Systems, Inc.
3 ("Brocade") and defendant Gregory L. Reyes hereby agree as follows:

4 1. Brocade may designate as "confidential" (by stamping the relevant page or as
5 otherwise set forth herein) any document or response to a subpoena which it considers in good
6 faith to: (i) contain information involving trade secrets, or confidential business or financial
7 information, subject to protection under the Federal Rules of Civil Procedure or California law;
8 or (ii) contain confidential information of a person that is protected by a right of privacy under
9 applicable law. Where a document or response consists of more than one page, the first page and
10 each page on which confidential information appears shall be so designated.

11 2. Brocade may designate information disclosed during a deposition as
12 "confidential" by so indicating on the record at the deposition and requesting the preparation of a
13 separate transcript of such material. Additionally, Brocade may designate in writing, within
14 twenty (20) days after receipt of the deposition transcript for which the designation is proposed,
15 that specific pages of the transcript be treated as "confidential" information. Any party may
16 object to such proposal, in writing or on the record. Upon such objection, the procedures
17 described in paragraph 7 below shall be followed. After any designation made according to the
18 procedure set forth in this paragraph, the designated documents or information shall be treated
19 according to the designation until the matter is resolved according to the procedures described in
20 paragraph 7 below.

21 3. All information produced by third party Brocade to defendant Gregory L. Reyes
22 in the course of this case (other than information that is publicly available) shall be used solely
23 for the purpose of this case and any related criminal or civil proceedings currently pending.

24 4. Except with the prior written consent of Brocade, or upon prior order of this Court
25 obtained upon notice to Brocade, anything designated as confidential pursuant to the terms of
26 this Order ("Confidential Information") shall not be disclosed to any person other than:
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- 1 (a) counsel for the respective parties to this litigation who have agreed to be
2 bound by the terms of this Order, including defendants' counsel and
3 counsel for the Securities and Exchange Commission;
4 (b) employees of such counsel;
5 (c) individual defendants, to the extent deemed necessary by counsel for the
6 prosecution or defense of this litigation;
7 (d) consultants or expert witnesses retained for the prosecution or defense of
8 this litigation, provided that each such person shall execute a copy of the
9 Certification annexed to this Order (which shall be retained by counsel to
10 the party so disclosing the Confidential Information and made available
11 for inspection during the pendency or after the termination of the action
12 upon good cause shown and upon order of the Court) before being shown
13 or given any Confidential Information and provided that if the party
14 chooses a consultant or expert employed by one of Brocade
15 Communications Systems, Inc.'s competitors or customers, the party shall
16 notify Brocade Communications Systems, Inc. before disclosing any
17 Confidential Information to that individual and shall give Brocade
18 Communications Systems, Inc. an opportunity to move for a protective
19 order preventing or limiting such disclosure;
20 (e) any authors or recipients of the Confidential Information;
21 (f) the Court, Court personnel and court reporters; and
22 (g) witnesses, at deposition and/or trial, only to the extent necessary to give
23 their testimony. At the request of any party, the portion of the transcript
24 involving the Confidential Information shall be designated "Confidential"
25 pursuant to paragraph 2 above. Witnesses shown Confidential
26 Information shall not be allowed to retain copies.
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1 5. Any persons receiving Confidential Information shall not reveal or discuss such
2 information to or with any person who is not entitled to receive such information, except as set
3 forth herein.

4 6. For applications and motions to the Court on which a party submits Confidential
5 Information, all documents and chamber copies containing Confidential Information which are
6 submitted to the Court shall be filed with the Court in sealed envelopes or other appropriate
7 sealed containers. On the outside of the envelopes, a copy of the first page of the document shall
8 be attached. If Confidential Information is included in the first page attached to the outside of
9 the envelopes, it may be deleted from the outside copy. The word "CONFIDENTIAL" shall be
10 stamped on the envelope and a statement substantially in the following form shall also be printed
11 on the envelope:

12 This envelope is sealed pursuant to order of the Court, contains
13 Confidential Information and is not to be opened or the contents
 revealed, except by Order of the Court or agreement by the parties.

14 In the event that the Clerk's Office refuses to accept a document filed under seal, the
15 filing party shall, not later than the next business day, file a notice indicating which documents
16 the party attempted to file. The filing party shall also serve a copy of the rejected filing by
17 overnight mail on Brocade. If Brocade wishes to contest the public filing of the document it
18 must file a motion to that effect within five (5) business days of the initial filing date. If no
19 motion is received, the filing party may file the document publicly within seven (7) business
20 days of the initial filing. If a motion is filed to permit the filing to be made under seal, the filing
21 party may not file the document with the confidential material included therein until the motion
22 is resolved. This procedure shall not affect any Court order or other rule regarding the
23 scheduling for future filings.

24 7. If a party contends that any material is not entitled to confidential treatment, such
25 party may at any time give written notice to Brocade. Brocade shall have twenty-five (25) days
26 from the receipt of such written notice to apply to the Court for an order designating the material
27 as confidential.
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1 8. Notwithstanding any challenge to the designation of material as Confidential
2 Information, all documents designated as confidential shall be treated as such and shall be
3 subject to the provisions hereof unless and until one of the following occurs:

4 (a) Brocade withdraws such designation in writing; or

5 (b) Brocade fails to apply to the Court for an order designating the material
6 confidential within the time period specified above after receipt of a
7 written challenge to such designation; or

8 (c) the Court rules the material is not Confidential Information.

9 9. All provisions of this Order restricting the communication or use of Confidential
10 Information shall continue to be binding after the conclusion of this action, unless otherwise
11 agreed or ordered. Upon conclusion of the litigation, a party in the possession of Confidential
12 Information, other than that which is contained in pleadings, correspondence and transcripts,
13 shall either (a) return such documents to counsel for the party or non-party who provided such
14 information no later than thirty (30) days after a request by such counsel, or (b) destroy such
15 documents within ninety (90) days following the conclusion of this action and all appeals and
16 certify in writing within thirty (30) days following destruction that the documents have been
17 destroyed.

18 10. If confidential information is inadvertently produced without marking it as such, it
19 may be disclosed to others until the receiving party becomes aware of the error. As soon as the
20 receiving party becomes aware of the inadvertent production, the information must be treated as
21 though it had been timely designated under this Confidentiality Order, and the receiving party
22 must endeavor in good faith to obtain all copies of the documents that it distributed or disclosed
23 to persons not authorized by Paragraphs 4 herein, as well as any copies made by such persons.

24 11. Nothing herein shall be deemed to waive any applicable privilege or work product
25 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
26 protected by privilege or work product protection.

27 12. This Order shall not apply to or affect the use of information already in the
28 possession of a party or obtained by a party outside the course of discovery in this litigation.

1 Respectfully submitted,

2 Dated: January 10, 2007

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

3
4 By: /s/ Caz Hashemi
Caz Hashemi

6 Attorneys for Third Party
7 Brocade Communications Systems, Inc.

8 Dated: January 10, 2007

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP
300 South Grand, Suite 3400
Los Angeles, CA 90071
Telephone: (213) 687-5000
Facsimile: (213) 687-5600

12 By: /s/ Jack DiCanio
13 Jack DiCanio

14 Attorneys for Defendant
15 Gregory L. Reyes

16
17 **THE FOREGOING STIPULATION**
18 **IS APPROVED AND IS SO ORDERED.**

19
20 Dated: _____, 2007

The Honorable Charles R. Breyer
United States District Judge

APPENDIX A

CERTIFICATION

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the Confidentiality Stipulation and Order dated _____ in *Securities and Exchange Commission v. Gregory L. Reyes, Stephanie Jensen and Antonio Canova*, Case No. C 06-04435 CRB (N.D. Cal.). I have been given a copy of that Order and read it. I agree to be bound by the Order. I will not reveal the Confidential Information to anyone, except as allowed by the Order. I will maintain all such Confidential Information -- including copies, notes or other transcriptions made therefrom -- in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information -- including copies, notes or other transcriptions made therefrom -- to the counsel who provided me with the Confidential Information. I hereby consent to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the Confidentiality Order.

SIGNATURE: _____

DATED: _____

1 I, Mark T. Oakes, am the ECF User whose identification and password are being used to
2 file this [PROPOSED] STIPULATED CONFIDENTIALITY ORDER. In compliance with
3 General Order 45.X.B, I hereby attest that Jack DiCanio has concurred in this filing.

4
5 Dated: January 10, 2007

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

6
7
8 By: /s/ Mark T. Oakes
Mark T. Oakes